Annual Report

1999

Our Mission

To provide a timely, fair and independent appeals process consistent with legislation policy and the principles of natural justice.

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INTRODUCTION

This is the annual report of the Appeals Commission for Alberta Workers' Compensation to the Minister of Human Resources and Employment and to the Appeals Commission's various constituents. The Appeals Commission's Strategic Plan outlines long-term objectives and yearly processing objectives. This report is a summary of the Appeals Commission's activities and operations for the fiscal year 1999 based on these objectives. The report also provides information on the future directions and strategic objectives of the Appeals Commission.

The Appeals Commission for Alberta Workers' Compensation is an independent quasi-judicial body separate from the Workers' Compensation Board. Established pursuant to the *Workers' Compensation Act,* the Appeals Commission considers appeals from the decisions made by the Claims Services Review Committee (CSRC) or the Assessment Review Committee (ARC) which are internal appeal bodies within the Workers' Compensation Board.

Appeals Commissioners hearing appeals are appointed by the Government of Alberta and are paid in accordance with the Order of the Lieutenant Governor in Council establishing remuneration for members of Boards and Commissions.

REPORT OF THE CHAIRMAN & CHIEF APPEALS COMMISSIONER

1999 has been a challenging year which has brought mixed results for the Appeals Commission. In presenting this eighth annual report of the activities of the Appeals Commission for 1999 I am extremely pleased with some of our significant accomplishments during the past year and I am encouraged by our ability to address difficult issues successfully. While I am disappointed with not having achieved some of the objectives we set for ourselves, I am satisfied our strategic directions are sound and will provide long-term success.

ACCOMPLISHMENTS TOWARDS LONG-TERM OBJECTIVES

I am pleased to highlight the following accomplishments:

- **Implementation of the new Appeals Management System** - We have been participating in the development of a new Appeals Management System for the past two years. In December of 1999 we celebrated the completion of this new system. Not only did this ensure that we were Y2K compliant but more importantly this system significantly enhances our day to day file management capabilities. It also provides a wealth of information to allow us to evaluate and manage the workload and the performance of the Appeals Commission. It enables comprehensive and reliable statistical reporting for our stakeholders.

- **Building Appeals Commissioner competencies** - The competency and professionalism of the individuals who hear and decide the appeals is a critical and essential component of any appeal body. In 1999 we continued the competency based recruitment model using a selection panel which included representatives of workers and employers. Five new appeals commissioners were recruited using this process.

The Appeals Commission remains committed to providing training for appeals commissioners. The five new appeals commissioners completed two weeks of in-depth training upon appointment. Eleven appeals commissioners attended a two-day training session entitled "Foundations of Administrative Justice". We also had an excellent presentation from the Honourable Chief Justice Cote on decision-making and decision writing.

- **Foundations of Administrative Justice Training** - The Appeals Commission remains strongly committed to the delivery of the "Foundations of Administrative Justice" course for tribunal members in Alberta. I participated in the delivery of four days of training in 1999.

- **Performance assessment process** - During 1999, the Appeals Commission implemented a performance assessment process for all appeals commissioners and hearing chairs. Individual performance appraisals, based on input from colleagues were conducted for each appeals commissioner and each hearing chair in January and June.

- **Adoption of a "Code of Conduct for Appeals Commissioners"** - In late 1999 the Appeals Commission adopted a "Code of Conduct for Appeals Commissioners". This code sets out the principles that guide appeals commissioners in their work within the Appeals Commission. The "Code of Conduct for Appeals Commissioners" was one of the first to be adopted for tribunal members within the Province.

- **Appeal Documents Sharing Program** - During 1999 a considerable amount of planning and development work was completed on the Appeal Documents sharing initiative. This is a program to share with the parties, the documents from the WCB file that the Appeals Commission has identified for consideration on the appeal. The planning is nearing completion and a trial project should be in place in the first half of 2000.

This program should have a major impact on the ability of the parties to prepare effectively for an appeal.

- **New Decision Document Format adopted** – Following extensive consultation with stakeholders a new format was developed and adopted for Appeals Commission decisions. The Decision document now includes submissions of the parties and an analysis section that outlines in more detail the panel's rationale for reaching the decision.

- **Quality Management Program developed** - In 1999 considerable effort was directed towards developing a quality management program designed specifically for the Appeals Commission. A Quality Assurance Program was adopted for Appeals Commission decisions including standards and measures. A preliminary test audit was completed in late 1999 to test the audit procedures. Quality assurance audits are scheduled to begin in 2000. This program will provide an excellent tool for the Appeals Commission to gauge the quality of its decisions.

- **Integration of technology continues** - We have continued to make strides with the integration of technology into the operations of the appeals system. A significant change in 1999 saw panels commence the use of laptops and overhead projectors in the decision making process.

REVIEWS OF APPEALS COMMISSION DECISIONS

Although the Appeals Commission is considered the final level of appeal, the decisions of the Appeals Commission are subject to the review of a number of bodies. Although these reviews have a limited scope they are extremely important to the Appeals Commission. The following reviews were conducted in 1999:

- **Judicial reviews** - There were six judicial reviews and in each case the Courts upheld our decisions.

- **Ombudsman recommendations** - The Ombudsman made recommendations on 10 of the 63 files they investigated. In five cases we were able to address the Ombudsman's concerns by issuing a clarification or addendum to correct or adequately explain the initial decision. Two cases did not require any further action, as while there were procedural errors, they did not affect the decision outcome. In the remainder of the cases we agreed to reconsider our initial decision in order to correct the problems identified.

- **Directives - Board of Directors** - The Board of Directors of the WCB may direct the Appeals Commission to rehear a matter if they consider that the Appeals Commission has not properly applied the policy or the provisions of the Act. In 1999 the Board of Directors referred five matters back to the Appeals Commission for rehearing. These were dealt with in 1999 as well as four from previous years. Due to the significance of these types of directives these matters were reheard with panels of five appeals commissioners. In summary, the results of these were:
  - In six of the nine cases, the Appeals Commission was not prepared to alter their original decision as they could not accept the interpretation of the legislation being suggested by the Board of Directors.
  - In one case the Appeals Commission accepted that they did not have jurisdiction to hear the matter.
  - In two cases the Appeals Commission accepted they had not applied the policy or other legislation as suggested by the Board of Directors.

- **Office of the Privacy Commissioner investigation** – One investigation was undertaken by the Privacy Commissioner regarding disclosure of

personal information and the actions of the Appeals Commission were found to have been appropriate.

Detailed summaries of these activities are provided in section 3 of this report.

APPEALS COMMISSION WORKLOAD

Forecasting and managing the fluctuating workload of the Appeals Commission continues to be one of the most challenging aspects of our work. 1999 presented significant challenges and we continue to learn from our experiences.

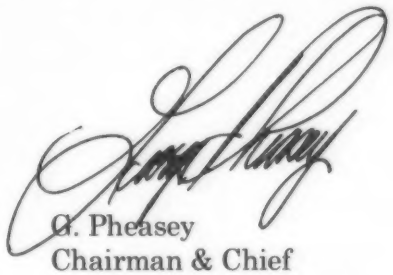
While the volume of initial appeals and reconsideration applications was virtually the same in 1999 as it was in 1998, there were significant peaks and valleys in the workflow. In response to low volumes we made adjustments to make more effective use of our resources. In November we experienced the highest monthly influx of appeals (182) in the 10-year history of the Appeals Commission and we were not able to immediately accommodate this huge increase. It was these circumstances that resulted in a growth of our outstanding appeals volume at year-end by approximately 30% over the previous year to 720. It is interesting to note that approximately 200 of these files were in an adjourned status as the appellant was not ready to proceed with the appeal.

Even though we did not achieve all of our processing objectives we were successful in maintaining both our timelines for processing appeals and our backlog at 1998 levels.

In closing I would like to express my appreciation to all of those individuals who contributed positively to the Appeals Commission during 1999. The work of the Appeals Commission, as well as being rewarding, is challenging both mentally and emotionally. The demands for excellence in quality and quantity in an often changing environment makes our work difficult. I continue to be

impressed by all those who meet and surpass the expectations and standards at the Appeals Commission. Your contributions and your commitment continue to improve the Appeals Commission from year to year. Thank you to each of our staff members for their extremely hard work.

I am sure that 2000 will be a significant year in the life of the Appeals Commission. I continue to look forward with anticipation and eagerness to our challenges.



G. Pheasey
Chairman & Chief
Appeals Commissioner

REPORT ON THE LONG TERM OBJECTIVES 1999 ACCOMPLISHMENTS

IMPROVE APPLICATION OF LEGISLATION, POLICY AND PROCEDURE.

Ensuring consistent, correct application of legislation, Workers' Compensation Board policy and Appeals Commission policy and procedures is critical to ensuring fairness and quality in the appeal process. To accomplish this we will develop a comprehensive framework of Appeals Commission policy and procedures which will provide guidelines and direction for the Appeals Commission and those involved in the appeals process.

HIGHLIGHTS:

- A Policy Specialist was recruited to provide continuity and commitment to the development of policies, and guidelines for the Appeals Commission.

- The Appeals Commission continued to hold semi-annual policy conferences to discuss and develop Appeals Commission policy and interpretive guidelines and practice guidelines.

- During 1999 the Appeals Commission adopted the following:
  - Policy on Management of New Evidence Presented Prior to an Appeals Commission Decision
  - Interpretive Guideline on 1 Year Limitation for Appeals from CSRC/ARC
  - Practice Guideline on Notice to Attend
  - Practice Guideline on Management of New Evidence Presented After an Appeals Commission Decision
  - Practice Guideline on Status at Appeals Commission Hearings
  - Practice Guideline on Adjournments & Withdrawals of Appeals

- An Administrative Procedures Specialist was appointed to develop and document internal procedures for policies, guidelines, operational and administrative processes and information systems.

ENSURE AN APPEAL SYSTEM THAT IS ACCESSIBLE AND CLEAR TO USERS.

Improving service begins with improving access to the appeal system. Users should be able to receive quality and timely service regardless of their familiarity with the system. The appeal system and processes should be clear and easily understood by all – transparent.

To accomplish this, the Appeals Commission will ensure the system is as simple as possible, that all information which can be shared is, and that information is clear and understandable.

HIGHLIGHTS:

- Commenced the Appeal Documents Sharing Project that will result in the Appeals Commission providing the parties with the documents from the claim file to be used in deciding an appeal. The implementation schedule has set the trial project to begin in early 2000.

- Continued to develop the appeal intake unit to ensure that early contact is made with the parties to confirm information and processing matters.

- Continued the preparation and distribution of the Annual Report documenting activities and planning of the Appeals Commission.

PROVIDE FOR UNCOMPROMISED INDEPENDENCE OF DECISION MAKING.

Decision-making on appeals must be done independently; free from any bias or influence. To be independent and to be perceived as independent, involves ensuring structures, services and relationships are in place, which allow absolute freedom in decision-making.

HIGHLIGHTS:

- The Appeals Commission continued the open recruitment process (see Appendix C) for Appeals Commissioners that includes the involvement of worker and employer representatives in the selection process.

- Discussions were initiated to recommend a review of the workers' compensation appeal system to ensure it is meeting the needs of employers and workers.

- Adopted a "Code of Conduct for Appeals Commissioners" which sets out principles that guide Appeals Commissioners in the work of the Appeals Commission.

IMPLEMENT A QUALITY MANAGEMENT SYSTEM.

Quality is a significant component in the Appeals Commission commitment to excellence in service. To achieve and maintain the standards of quality of systems, processes, products and services we will develop and implement a comprehensive Quality Management System for the Appeals Commission including Quality Control, Quality Improvement and Quality Planning.

HIGHLIGHTS:

- The Quality Management Specialist, recruited in the fall of 1998, established a three year implementation plan for the development of a Quality Management System.
- Audit mechanisms, instruments, standards and performance measures were established for the first area to be audited, the decision document.
- A test audit was completed of decision documents to establish validity of standards, measures and audit instruments.
- Commenced the development of standards and performance measures for the next key area, the hearing process.

IMPROVE ORGANIZATIONAL EXPERTISE AND LEARNING.

Applying superior expertise and knowledge within excellent appeal and administrative processes will enhance achievement of quality of product and service.

To achieve superior expertise and knowledge the Appeals Commission will develop a comprehensive competency based training program for improving and maximizing the use of competencies and abilities.

HIGHLIGHTS:

- Developed and implemented a system of performance appraisal for appeals commissioners and hearing chairs and conducted individual performance discussions in January and June.

- Completed competency profiles for appeals commissioners, hearing chairs, registrars and administrative staff.

- As part of the performance assessment process identified individual training plans for staff.

- Provided for a presentation by the Hon. Chief Justice Cote on Decision Making and Decision Writing.

- Arranged for the participation of eleven Appeals Commissioners in the two day "Foundations of Administrative Justice" course.

- Continued to support the delivery of "Foundations of Administrative Justice" course by participating as one of the trainers.

MAXIMIZE ACCESS TO, AND AVAILABILITY OF, UP-TO-DATE TECHNOLOGY.

Many service improvements, process and procedural changes and communication and information sharing initiatives cannot be accomplished without the advantage of up-to-date technology. To achieve maximum access and benefits of technology, the Appeals Commission will implement a long term appropriately researched plan to acquire and maintain technology.

HIGHLIGHTS:

- Completed the acquisition of laptops and projectors for use in the decision-making process.

- Ensured Y2K compliance of all hardware and software including upgrades and purchases as required.

- Installed and trained all users of Lotus Notes e-mail system.

INTEGRATE TECHNOLOGY AND SYSTEMS IN INNOVATIVE WAYS IN THE PROCESSES AND OPERATIONS OF THE APPEALS COMMISSION.

By redesigning our operations, processes, systems and procedures to take full advantage of the benefits of technology we will enhance our products and services including improving access to information and simplifying delivery mechanisms. Effective integration is built upon ensuring competencies to effectively access and use new technology.

HIGHLIGHTS:

- Increased use of technology such as laptops and projectors and software such as Tabers Medical Dictionary and Netters Atlas of Clinical Anatomy used for preparation for hearings and in the post-hearing decision-making.
- Implemented the use of file server in post-hearing decision writing process.
- Provided ongoing training for users in Windows NT, Office 97 and use of templates, macros and autotext.
- Started on-line updating of file management information by users of the Appeals Management System.

IMPLEMENT UP-TO-DATE FILE MANAGEMENT PRACTISES.

Modern file management goes well beyond paper files to electronic file management systems that identify and track backlog, bottlenecks, assist with scheduling, adjournments and alert staff of timely processing. The Appeals Commission will develop and maintain a comprehensive file management system that provides full and accurate data and information.

HIGHLIGHTS:

- An Appeals Management System (AMS) was implemented to integrate the processing of information for all applications into one database.
- Training was provided for all users of the new AMS.
- Procedures manuals and business application processes were developed and adopted for the AMS.
- Basic Reports using the AMS database were developed.

IMPLEMENT UP-TO-DATE BUSINESS MANAGEMENT PRACTISES.

Effective and efficient management of the Appeals Commission requires sound human resource, financial and business planning practices. To accomplish this the Appeals Commission will adopt a comprehensive set of documented business practices that will be subject to independent audit.

HIGHLIGHTS:

- Developed a human resource database for the Appeals Commission.
- Reviewed all contracts of employment to ensure that they are accurate and consistent.

REPORT ON PROCESSING OBJECTIVES
1999 RESULTS

EXPLANATORY NOTES:

1. The appeal workload was lighter than forecasted at the beginning of the year and heavier than forecasted at the end of the year.
   - The Appeals Commission began 1999 with a reduced inventory of appeals (553). Of these 553 appeals, 148 could not be processed as the appellant was not ready to proceed.
   - The number of appeals received in the first two months of 1999 was down by 18% over the previous year.
   - The number of appeals received in November was the highest single month in the history of the Appeals Commission – 182 appeals.

2. To accommodate these fluctuations the hearing units were adjusted in the following manner:
   - Normally the workload is divided between seven hearing units operating full-time.
   - At the beginning of March two full-time units were reduced to half time.
   - There was an unexpected reduction in staff resulting in a reduction of one further hearing unit in April.
   - The two half-time hearing units were returned to full-time in June.
   - On November 15, 1999 a hearing chair was recruited and the seventh hearing unit was reactivated.

The Appeals Commission reacted to the reduced workload by reducing our hearing capacity accordingly. Once increased workloads were confirmed we took the appropriate actions to increase the hearing units however not in time for it to affect our 1999 results. We are satisfied that the resources we have put in place will positively affect our 2000 results.

PROCESSING OBJECTIVE #1

Improve the service provided to appellants by increasing the number of appeals and other applications finalized while decreasing the time used in processing.

KEY MEASURE # 1

Conclude a minimum of 70% of the total of: appeals on hand at year-end 1998 and the initial appeals received in 1999 process.

ANALYSIS

	Obj.	Actual
• Initial appeals on hand for the year end 1998		493
• Initial appeals for 1999		1178
• Total initial appeals for processing		1671
Objective: process 70%	1170	1024
• Initial appeals outstanding at year end 1999	501	647

CONCLUSION

This objective was not achieved. See the explanatory note on Page 15.

KEY MEASURE # 2

Conclude a minimum of 75% of the total of: the applications for reconsideration on hand at year-end 1998 and the applications for reconsideration received in 1999.

ANALYSIS

	Obj.	Actual
• Reconsiderations on hand for the year end 1998		60
• Reconsideration applications for 1998		196
• Total reconsiderations for processing in 1999		256
Objective: process 75%	192	183
• Reconsideration applications outstanding at year end 1999	64	73

CONCLUSION

This objective was not achieved. See the explanatory note on Page 15.

KEY MEASURE # 3

Reduce the processing time for initial appeals by 10 days.

ANALYSIS

	Obj.	Actual
• Processing time for initial appeals January 1, 1999		150 days
	-10 days	-5 days
• Processing time for initial appeals January 1, 2000	140 days	145 days

CONCLUSION

This objective was not achieved. See the explanatory note on Page 15.

KEY MEASURE #4

Reduce the period of time from application for appeal received to hearing scheduled by 8 days.

ANALYSIS

	Obj.	Actual
• Time from appeal received to hearing scheduled January 1, 1999		83 days
	-8 days	-13 days
• Time from appeal received to hearing scheduled January 1, 2000.	75 days	70 days

CONCLUSION

This objective was achieved.

KEY MEASURE # 5

Reduce the period of time from hearing scheduled to appeal finalized by 2 days.

ANALYSIS

	Obj.	Actual
• Time from hearing scheduled to finalized January 1, 1999		67 days
	-2 days	+8 days
• Time from hearing scheduled to finalized January 1, 2000	65 days	75 days

CONCLUSION

This objective was not achieved. See the explanatory note on Page 15.

KEY MEASURE # 6

60% of appeals are processed within 103 days of receipt.

ANALYSIS

	Obj.	Actual
• Total # of initial appeals finalized in 1999		921
60% of appeals finalized within 103 days	553	
• # of appeals finalized within 103 days of receipt		334*

* Pro-rated for the entire year based on available data

CONCLUSION

This objective was not achieved. See the explanatory note on Page 15.

KEY MEASURE # 7

90% of appeals are processed within 140 days of receipt.

ANALYSIS

	Obj.	Actual
• Total # of initial appeals finalized in 1999		921
90% of appeals finalized within 140 days	829	
• # of appeals finalized within 140 days of receipt		606*

* Pro-rated for the entire year based on available data

CONCLUSION

This objective was not achieved. See the explanatory note on Page 15.

KEY MEASURE # 8

Reduce the number of appeals in the Appeals Commission Backlog by 10%.

ANALYSIS

	Obj.	Actual
• Appeals Commission backlog of initial appeals January 1, 1999		152
Objective: 10% reduction	-15	+1
• Appeals Commission Backlog of initial appeals January 1, 2000	137	153

CONCLUSION

This objective was not achieved. See the explanatory note on Page 15.

PROCESSING OBJECTIVE #2

Reduce the amount of rework associated with appeal workload.

KEY MEASURE # 1

Number of Appeals Commission decisions overturned by the courts to be zero.

ANALYSIS

	Obj.	Actual
• Appeals Commission decisions overturned by the Courts in 1998.		0
Objective: Maintain 1998 status	0	
• # of court decisions 1999		6
• # of court applications abandoned		1
• Appeals Commission decisions overturned by the Courts in 1999	0	0

CONCLUSION

This objective was achieved.

KEY MEASURE # 2

Reduce the number of files on which the Ombudsman issued recommendations by 50%.

ANALYSIS

	Obj.	Actual
• # of files the Ombudsman made recommendations on in 1998		6
Objective: Reduce by 50%	3	
• # of files the Ombudsman made recommendations on in 1999	3	10
• # of Ombudsman recommendations accepted		10
• # of matters reheard as a result of recommendations		9
• # of original Appeals Commission decisions upheld		4
• # of original Appeals Commission decisions overturned.		5

CONCLUSION

This objective was not achieved. Details with respect to the Ombudsman's recommendations are contained in Section 3(c) of this report.

KEY MEASURE # 3

Reduce the number of files where the Board of Directors pursuant to Section 8(7) directs a rehearing by 50%.

ANALYSIS

	Obj.	Actual
• # of rehearings directed by the Board of Directors in 1998		6
Objective: Reduce by 50%	3	
• # of rehearings directed by the Board of Directors in 1999.	3	5
• # reheard in 1999 at the direction of the Board of Directors		9
• # of original Appeals Commission decisions upheld		6
• # of original Appeals Commission decisions overturned		3

CONCLUSION

This objective was not achieved. Details with respect to the Board's of Directors directives are contained in Section 3(d) of this report.

KEY MEASURE # 4

Reduce the number of requests for clarifications where a clarification is issued by 50%.

ANALYSIS

	Obj.	Actual
• # of clarifications issued in 1998.		44
Objective: Reduce by 20%	9	
• # of clarifications issued in 1999.	35	39

CONCLUSION

This objective was not achieved.

KEY MEASURE #5

Reduce the number of "own motion" reconsideration of decisions by 50%.

ANALYSIS

	Obj.	Actual
• # of decisions the Appeals Commission reconsidered on its own motion in 1998.		7
Objective: Reduce by 10%	1	
• # of decisions the Appeals Commission reconsidered on its own motion in 1999.	6	12

CONCLUSION

This objective was not achieved.

HIGHLIGHTS OF APPLICATIONS FOR JUDICIAL REVIEW

In 1999, six applications for judicial review of Appeals Commission decisions were heard and dismissed by the Court of Queen's Bench. One application was adjourned during the special chambers application in order to permit Counsel to prepare supplemental briefs, the hearing was not concluded by the end of 1999.

- In *Nicholson* v. *Appeals Commission*, the self-represented Applicant asked the Court to quash the Appeals Commission's decision. The Applicant alleged that the decision to base an earnings loss supplement on his ability to earn $6.00 per hour was patently unreasonable. He also challenged the Appeals Commission's decision to refuse to reconsider his compensation rate. Finally, the Applicant alleged that the Appeals Commission breached the rules of natural justice by refusing to grant an in-person hearing. The application was dismissed, with costs. No oral reasons were given. The Applicant appealed the decision to the Court of Appeal, however, as the Applicant did not pursue the appeal in a timely fashion, the appeal was struck from the list.

- In *Kelly* v. *Appeals Commission*, the worker represented herself in an application to have the Appeals Commission's decision quashed because she felt that the Appeals Commission had incorrectly interpreted medical information from 1979 and 1980. The Court held that medical reports were ambiguous and that the interpretation placed on them by the Appeals Commission was not patently unreasonable or irrational. The Court expressed concern that the Appeals Commission could have done more to resolve the ambiguities found in the medical reports and suggested further consultation with specialists might deal with those ambiguities. The Appeals Commission considered the Court's recommendations and determined that it was impossible to refer the matter to specialists for further consultation since the x-rays in question were no longer available.

- In *Nattress* v. *Appeals Commission*, the Applicant sought to have the Appeals Commission's decision quashed on the basis that the Appeals Commission lacked the necessary expertise to decide whether a worker was injured in the course of her employment. Ms. Nattress was an employee of Lilydale Co-operative who, after finishing her shift, was involved in a motor vehicle accident on the employer's premises. A large company truck struck her vehicle. The Appeals Commission upheld the decision that Ms. Nattress was a worker. Counsel for Ms. Nattress argued that the test to be used by the Court in reviewing the Appeals Commission's decision was whether the decision was correct. This is a higher standard than the patently unreasonable test. Counsel cited the lack of expertise of the Appeals Commissioners (based on the Supreme Court of Canada's decision in *Pushpanathan*) as the reason for the higher standard. The Court found that the appropriate standard of review was whether the decision was patently unreasonable. The Court further found *"the interpretation is reasonable and puts no strain on the wording such as the one proposed by the Applicant. It follows, that in my view, there is evidence upon which the Appeals Commission could reasonably have reached its conclusion. It properly exercises jurisdiction"*.

- The grounds set out in the application for judicial review in *Westcan Bulk* v. *Appeals Commission* were that the Appeals Commission made an error of law in the interpretation

of section 7 of the *Workers' Compensation Act* and further that section 7 was a limiting provision with respect to the Appeals Commission's jurisdiction. The Court found that section 7 was not a limiting provision but that in fact *"it is an unlimited provision. Section 7(1) bestows upon the Appeals Commission exclusive jurisdiction to examine, inquire into, hear and determine all – and I emphasize all – matters and questions arising under the WCA in respect of appeals from decisions of the Assessment Review Committee".* The Applicant also argued that the Appeals Commission's decision was patently unreasonable because section 90 of the *Workers' Compensation Act* requires not only the average cost of fatalities be apportioned equally among employers in the year that they are accepted by the Board, but the levy assessed against each employer to whom the WCA applied be equal as well. The Court found this suggestion to be patently unreasonable and that it confused two different concepts. The Applicant failed to satisfy the Court that the decision of the Appeals Commission was patently unreasonable.

- In *Sammut* v. *Appeals Commission* the Applicant sought the court's review on the basis that the Appeals Commission could not deny that a worker was entitled to permanent partial disability benefits when it had acknowledged the existence of permanent work restrictions. The Applicant argued that permanent work restrictions must result in permanent impairment of earnings capacity and permanent disability benefits. The Appeals Commission's decision recognized that the worker had suffered permanent work restrictions but determined, in view of the worker's actual post-accident earnings history, that the worker had not suffered a permanent impairment of earnings capacity. The Appeals Commission granted the worker an award to compensate for current earnings loss which would continue until the worker's post-accident earnings exceeded his pre-accident earnings. The Appeals Commission also determined, based upon two separate attempts to measure permanent clinical impairment, that there was no assessable permanent clinical impairment and therefore the worker was not entitled to a permanent disability award. The Court upheld the Appeals Commission's decision.

- The court dismissed the application in *Reeves* v. *Appeals Commission* on the basis that the decision of the Appeals Commission was not patently unreasonable. Mr. Reeves injured his back and neck when he was involved in a motor vehicle accident in December of 1993. His recovery was delayed as a result of a non-compensable problem (retinal detachment). He also suffered from sub-arachnial bursitis which was unrelated to the compensable injury. In February of 1995, Mr. Reeves' physician reported that it might take until the end of 1995 before he would be able to return to work. Reeves suffered a serious assault in February of 1995 with significant injuries from the lower leg to the head. Neither he, nor his physician, reported this assault to the WCB. The assault was discovered at the Appeals Commission hearing and the Appeals Commission determined that it was difficult to determine whether the worker's complaints of neck and back pain were related to the pre-existing (non-compensable) conditions or the severe assault. The appeals commissioners did, however, conclude that they were not related to the compensable accident. The Court concluded that WCB Policy permitted payments to stop on the basis that the sole cause of the continuing disability is a pre-existing or unrelated health problem. The Court was satisfied that there was evidence from which the appeals commissioners could reasonably conclude that the worker's problems were caused by unrelated health problems. The Appeals Commission's decision was upheld.

HIGHLIGHTS OF REVIEWS BY THE OFFICE OF THE OMBUDSMAN

Persons who feel the Appeals Commission erred in making its decisions may complain to the Office of the Ombudsman. When investigating these complaints the Office of the Ombudsman considers the procedures followed and the reasonableness of the Appeals Commission's analysis.

During 1999, the Ombudsman concluded 63 investigations regarding Appeals Commission decisions. While most of these investigations did not find problems with Appeals Commission decisions the Ombudsman made recommendations in 10 cases. These recommendations resulted in the Appeals Commission rehearing the matters or issuing clarifications of their previous decisions. The results are as follows:

IMPROPER APPLICATION OF LEGISLATION OR POLICY

- The Appeals Commission received notice of a complaint to the Ombudsman regarding an error in the application of the *Worker's Compensation Act*. The Appeals Commission proceeded on its own motion to reconsider the case and apply the proper statutory provision. The Ombudsman did not find it necessary to issue a recommendation.

- The Ombudsman observed that the Worker's Compensation Board had replaced the policy referenced and applied by the Appeals Commission prior to the date of the accident that was the subject of the appeal decision. The Ombudsman acknowledged that the provisions of the applicable policy were essentially the same as the policy that had been applied and that application of the correct policy would not change the result. The Ombudsman suggested that the Appeals Commission issue an addendum to identify and apply the correct policy. An addendum was issued.

DECISION REQUIRED CLARIFICATION

- The Ombudsman expressed the concern that the Appeals Commission had not provided adequate written reasons for a decision. The Ombudsman recommended that the Appeals Commission reconvene the panel to review the adequacy of the reasons provided. The panel reconvened and provided detailed reasons for their decision in an addendum.

- The Ombudsman found that the Appeals Commission used the term "suitable" without adequately explaining the meaning of the term. He recommended that the panel provide further reasons for decision dealing with this issue and define the term "suitable".

- The Ombudsman recommended that the Commission clarify a decision in order to address an amended medical opinion on file because the change in opinion had not been clearly addressed in the decision. A clarification of the decision was issued by the Appeals Commission.

- The Ombudsman concluded that the Appeals Commission did not identify applicable Act or policy provisions when it decided one of the issues in the case. He recommended that the panel reconvene and identify the appropriate authorities they applied to the evidence. The necessary review was undertaken and an addendum was issued.

ADMINISTRATIVE OR PROCEDURAL ERRORS

- The Ombudsman concluded that the Appeals Commission made an administrative error in a written decision issued in answer to a reconsideration request. The decision did not refer to all of the medical evidence or explain how that evidence was weighed in the decision making process. Notwithstanding this expressed concern, the Ombudsman had no quarrel with the decision made by the Appeals Commission.

- The Ombudsman noted that the Appeals Commission had, in making a decision, expressly referred to and preferred evidence from a secondary source that was inconsistent with evidence available from the primary source. The Ombudsman observed that evidence from a primary source is generally preferred because it tends to be more reliable. This observation was shared with all Appeals Commission staff. No further action was required. The Ombudsman concluded that acceptance of the primary source evidence would not have changed the result in this case.

- The Ombudsman concluded that the Appeals Commission erred in identifying the appellant's non-attendance at the initial hearing as a basis for its refusal to reconsider an appeal. The Ombudsman recommended that a reconsideration request be considered by a new panel. The Appeals Commission agreed to assign a new panel to determine whether a rehearing would be granted.

- The Ombudsman concluded that two issues of appeal raised by the worker had not been addressed by the Appeals Commission. The Appeals Commission addressed those issues and the Ombudsman indicated his satisfaction with the action taken by the Appeals Commission. However, he indicated that an appeal issue that was raised in a later appeal letter (after the time limit for bringing the appeal on that issue had expired), had not been addressed. The Appeals Commission agreed to refer written submissions for extension of the one-year time limit to the Chief Appeals Commissioner for his consideration in determining whether to waive the time limit. The Ombudsman indicated that he was satisfied with this proposed course of action.

HIGHLIGHTS OF REVIEWS OF THE BOARD OF DIRECTORS – s. 8(7), WCA

The Board of Directors of the Workers' Compensation Board has the authority, pursuant to section 8(7) of the *Workers' Compensation Act* to direct the Appeals Commission to rehear matters if the board of directors considers that the Appeals Commission has failed to properly apply the legislation or policy.

Due to the significance of these matters, the Appeals Commission decided in 1999 that directions from the Board of Directors would be heard by a panel of at least five appeals commissioners.

At that start of 1999 there were four re-hearings outstanding from 1998. The Appeals Commission received five directives for re-hearings in 1999. At the end of 1999, the Appeals Commission had reheard all of those appeals.

FAILURE TO CONSIDER APPLICABLE LEGISLATION

- In 1993, a parent company created three new corporations. The WCB issued orders under section 11(2) of the *Workers' Compensation Act* deeming the workers of the three new corporations to be workers of the parent company. The Assessment Review Committee heard an appeal regarding these orders and decided to exclude specific individuals who were directors or consultants from the orders. As a result of this decision, the WCB rescinded the original orders and issued new orders with the exclusions prescribed by the Assessment Review Committee. The employer appealed the retroactivity of the orders to the ARC and the ARC concluded that section 11(2) did permit retroactive orders. This was appealed to the Appeals Commission. The Appeals Commission concluded that section 11(2) of the *Workers' Compensation Act* did not permit retroactive orders to be made and directed the WCB to adjust the dates of the deeming orders to reflect the dates the orders were actually issued. The decision was subsequently amended concluding that the only deeming orders that were the subject of the appeal before them were the amended orders. The WCB referred this matter to the Board of Directors and the Appeals Commission was ordered to give fair and reasonable consideration to the effective date and the periods of applicability of the Orders made by the Board. The Appeals Commission was also directed to consider the provisions of the *Interpretation Act*. The employer took the board's order to the Court of Queen's Bench on judicial review where the Court determined that the Board of Directors did not have the authority to order the Appeals Commission to consider provisions of the *Interpretation Act*. The Court of Queen's Bench decision was appealed to the Court of Appeal. The Court of Appeal determined "section 8(7) is not so confined [to Board policy], and interpreting the *Workers' Compensation Act* is germane, indeed mandated by section 8(7). The *Interpretation Act* applies to all Alberta statutes, whether or not that is the policy of any of the bodies created or governed by them." The Appeals Commission reheard the matter and determined that section 11(2) does not support retroactive orders. The Appeals Commission also concluded that the first board orders were repealed by the second orders and that the first orders remained in force until the second orders were made.

JURISDICTION OF DIFFERENT LEVELS OF APPEAL TO HEAR AND DECIDE

- In July of 1997, an employer requested cost relief. The WCB denied the request in August of 1997. The matter was appealed to the CSRC in September of 1997 and in a decision in January of 1998, the CSRC decided that the appeal was outside the one year time limit and the time limit would not be waived. The CSRC advised that the issue was entitlement, not cost relief and therefore the employer was out of time. The matter was appealed to the Appeals Commission. The Appeals Commission considered the matter and determined that the WCB had decided the matter in August of 1997 and therefore the time limit did not apply. This decision was referred by the WCB to the Board of Directors. The Appeals Commission was directed to rehear an employer's request for cost relief and to give fair and reasonable consideration to sections 7(1)(a), 39.1(2) and (3) and 40(1), (7) and (9) of the *Workers' Compensation Act* and to Policy 05-02. The new panel of appeals commissioners found that the WCB decided the issue of cost relief in August and again in September of 1997. This decision was appealed in September of 1997. The Board of Directors indicated that the decision of the Chair of the CSRC not to extend the appeal deadline was not a decision of the CSRC and further that it was not appealable to the Appeals Commission. The Appeals Commission agreed with this conclusion. The Appeals Commission found, however, that the decision which the Board of Directors indicated was a decision of the Chair of the CSRC could not have been made by the Chair pursuant to section 40(7) of the Act because it was not a decision regarding the waiver of a time limit. The Appeals Commission concluded that the decision must have been made by the CSRC pursuant to section 40(1) and was therefore appealable. The Appeals Commission concluded that a critical component was the decision to re-characterize the issue of appeal from cost relief to benefit entitlement. The Appeals Commission did not accept the suggestion from the Board of Directors that as part of deciding whether to extend the appeal deadline, the Chair of the CSRC could decide the issue of appeal. This would permit the chair to prevent appeals from reaching the Appeals Commission by recharacterizing the issue of appeal and then imposing the deadline for appeal. The Board of Directors also suggested that cost relief was merely an administrative consequence of a prior decision and that Policy 05-02 could not be used as a method of circumventing the statutory time limitation period set out in section 40(1) of the Act. The Appeals Commission did not accept this suggestion, as it found that the discretionary wording of the policy and the contemplation of an application for cost relief in that policy would suggest otherwise.

- The Board of Directors ordered a rehearing of an appeal dealing with an employer's request for cost relief. The Appeals Commission was directed to give fair and reasonable consideration to sections 7(1)(a), 39.1(2) and (3) and 40(1), (7) and (9) of the *Workers' Compensation Act* as well as Policy 05-02. In 1998, the employer requested cost relief. The WCB denied this request. The matter was appealed to the Claims Services Review Committee (CSRC). The Acting Chair of the CSRC advised that the issue of appeal was entitlement, not cost relief, that the appeal was outside the one year time limit because the entitlement issue had been decided in 1995 and that the time limit would not be waived. The matter was appealed to the Appeals Commission. The Appeals Commission found that the issue of appeal was cost relief and the employer had requested cost relief in January of 1998. The Appeals Commission decided that the WCB advised the employer of their decision in February and June of 1998. The Appeals Commission also decided that the employer appealed in July of 1998 which was within the one year time limit for appeal. The Board of Directors indicated that the decision made by the Chair of the CSRC was protected from appeal by section 40(9) of the Act. The Appeals Commission found that only the CSRC is empowered to decide whether an appeal is within the one year time limit by virtue of the fact that the one year time limit is found in section 40(1) of the Act. All decisions made pursuant to section 40(1) of the Act are, as found by the Appeals Commission in this case, clearly appealable to the Appeals Commission. The Appeals

Commission concluded that if the CSRC determines that a matter is outside the one year time limit, only the Chair, as set out in section 40(7) of the Act has the authority to decide whether to grant an extension of time. This decision is not appealable to the Appeals Commission by virtue of section 40(9) of the Act. The Appeals Commission also concluded that the Chair of the CSRC does not have the authority to recharacterize an issue of appeal and thereby invoke the protection of section 40(9) of the Act. The result would prevent proper issues of appeal from ever reaching the Appeals Commission. The Board of Directors also indicated that cost relief, under Policy 05-02 was merely the administrative consequence of a prior decision (in this case an entitlement decision) and that this Policy cannot be used to circumvent the time limit for appeals. The Appeals Commission held that cost relief is not merely an administrative consequence of an entitlement decision. The Appeals Commission concluded that conscious decisions regarding cost relief were contemplated in the Policy and that some types of cost relief would not be apparent at the time of an entitlement decision (prolonged recovery). The discretionary wording of the Policy also supported the finding that a separate decision must be made on cost relief.

- The Board of Directors directed a rehearing of an assessment appeal. The Appeals Commission was directed to "give fair and reasonable consideration to sections 7(1)(b), 116(6) and 116(8) of the *Workers' Compensation Act* as well as Assessment Policies 01-05-02 and 09-02-01. The issue of appeal outlined by the Appellant was the date a decision was made by the WCB regarding the establishment of a new account for an employer. The Assessment Review Committee determined that certain correspondence from 1998 did not constitute a new decision by Employer Services and that the decision had been made in 1997 which meant that the appeal was outside the one year time limit for appeal. The Appeals Commission examined the correspondence from 1998 and determined that Employer Services had in fact made a new decision in 1998 and as a result of this, the one year time limit for appeal did not apply. The Board of Directors had also indicated that the Appeals Commission did not have jurisdiction to hear the matter because the purported "decision" by the ARC in 1998 was not a decision but merely correspondence. The Appeals Commission concluded that in fact the correspondence was a decision pursuant to section 116(5)(b) of the *Workers' Compensation Act*. The Board of Directors also indicated that the Appeals Commission was precluded from hearing the appeal by virtue of section 116(8) of the Act and that by separating the 'determination' of the date of decision from the decision to extend an appeal period, the Appeals Commission was doing indirectly what it could not do directly. The Appeals Commission concluded that section 116(6) provides the Chairman (or delegate) with the limited authority to decide whether or not to extend the one-year deadline imposed by section 116(1), based on consideration of whether or not there are justifiable reasons. The Appeals Commission could find no authority in section 116(6) for the Chairman to determine any other matters.

- The worker, a meat cutter, fractured a hip and wrist when he fell approximately nine feet. The rate of compensation was established on his part time earnings as a meat cutter. The rate of compensation was appealed to the CSRC where it was upheld. However, the CSRC noted that the worker could submit earnings information regarding farm income to the CSRC for review. The worker appealed this decision to the Appeals Commission. Subsequently information was submitted to the WCB regarding farm income and the rate of compensation was adjusted to reflect the income. The compensation rate reflected one third of the gross income earned in the farming operations, even though there was an economic loss reported for the purposes of income tax. The Appeals Commission was not notified of this new decision and on virtually the same day as the WCB adjusted the rate of compensation, the Appeals Commission issued a decision regarding the rate of compensation and determined that the rate should not be adjusted given that the worker's information indicated that the farm was operating at a loss. The Appeals Commission decided that net earnings are established under the *Regulations* (section 1) and did not allow a net loss to be considered income. Despite the Appeals Commission's decision, the

WCB continued to pay the worker using the increased compensation rate for a period of at least one year. The rate was adjusted when a CSRC member noted the Appeals Commission's decision while dealing with a separate issue of appeal. The WCB questioned the decision of the Appeals Commission and the worker's representative requested a reconsideration of the original decision. The Appeals Commission refused to reconsider its original decision. The worker's representative requested the Board of Directors review the decision. The Board of Directors ordered the Appeals Commission to rehear the matter and give proper consideration to section 7(1)(a) of the *Workers' Compensation Act* because it dealt with an issue that was not on appeal and decided an issue that was not previously the subject of an appeal. The board of directors particularly noted that "the decision of the CSRC ... merely noted in passing that Claimant Services had not included any farming income in setting the worker's compensation rate and invited the worker to submit such evidence to Claimant Services for decision. At no time did the CSRC itself render a decision respecting the amount of farming income to be included for the purposes of setting the compensation rate." The panel of appeals commissioners determined that the specific direction given by the CSRC to the WCB to consider evidence as to whether farm income should be included in calculating a compensation rate, was not a decision of the CSRC which was appealable to the Appeals Commission. The CSRC did not render a decision on this issue and therefore the Appeals Commission was without jurisdiction to hear the matter.

- The WCB accepted full responsibility for an injury to a worker's right hand in 1995. The worker's compensation rate was established in order to pay benefits to the worker. In 1998, the employer questioned the rate of compensation and requested cost relief on the basis of an overpayment. The WCB denied this request in January of 1998. The CSRC determined that the issue of appeal related to the rate of compensation and declined to waive the one year time limit for appeal. A further appeal was submitted in June of 1998 based on the New Evidence Policy (05-01). The CSRC denied this appeal because there was no new evidence. The decision was appealed to the Appeals Commission in September of 1998. The Appeals Commission made a decision that the issue of appeal related to new evidence and not to cost relief. The Board of Directors ordered a rehearing of this appeal and directed the Appeals Commission to give fair and reasonable consideration to sections 7(1)(a), 39.1(2) and (3) and 40(1), (7) and (9) of the *Workers' Compensation Act* and Policies 05-01 and 05-02. On rehearing the Appeals Commission determined that the issue of appeal was new evidence, not the rate of compensation.

MISAPPLICATION OF WCB POLICY

- The worker, a cook, fell and injured her right hip, right ankle and bruised her lower right leg at work. She sought medical treatment and x-rays of her pelvis and right hip were taken and she was discharged. The WCB accepted her claim on a no time loss basis. No further medical reporting was received for a period of almost a year. Twenty months after the injury, the worker stopped working allegedly as a result of her compensable injury. The WCB denied responsibility for a claim for compensable time loss from work because her low back symptoms that caused her work lay off were not related to her compensable injury. The worker appealed this decision to the Claims Services Review Committee (CSRC). The CSRC denied acceptance of her claim on a time loss basis and this decision was appealed to the Appeals Commission. The worker provided three letters from her colleagues indicating she was a hard worker and required help carrying heavy items. A colleague indicated that after the accident she had problems lifting heavy items and would receive assistance as necessary. He also noted this seemed to work well for a while but 18 months after the accident, she complained to him on a more frequent basis and obtained time off to see physicians for pain in her hip. Further she complained about pain and he noticed she was taking painkillers on a regular basis. The Appeals Commission denied her appeal finding that there was no connection between the symptoms which

caused her to be unable to continue working and the compensable injury. The Appeals Commission also denied the appeal because there was no continuity in the medical reporting on file to support the time lost from work was due to the compensable injury. The Board of Directors reviewed the decision and determined that in order for an accident to be acceptable, there were two conditions which must be met. First the accident must have arisen out of employment and second, it must have occurred in the course of employment. The Board also noted that there was no additional requirement for medical evidence demonstrating a continuity of medical symptoms and treatment between the date of accident and the day of layoff. The Board concluded that by adding this requirement, the Appeals Commission exceeded its jurisdiction. The matter was reheard by a new panel of appeals commissioners who found that there was a causal connection between the injury and the symptoms which caused the worker to stop working and accepted the time lost from work as being compensable. The Appeals Commission also determined that there was evidence supporting the continuity of problems experienced by the worker, and that by continuing to work as a cook it caused a deterioration of her condition to the point that she was eventually unable to work. Evidence from co-workers as well as some medical evidence supported this conclusion.

- The Board of Directors ordered the Appeals Commission to rehear the worker appeal having regard to section 7(1)(a) of the *Workers' Compensation Act* and Policy Statement ADJ-25. The Board of Directors indicated that a CSRC decision denied responsibility for the worker's right carpal tunnel symptoms, and by direct implication, any ongoing responsibility that might arise therefrom. The Board of Directors also noted that the Appeals Commission misapplied Policy ADJ-25 by "mistaking predisposition for pre-existence". The worker suffered from carpal tunnel syndrome in both wrists. The CSRC accepted aggravational responsibility for the left wrist but denied responsibility for the right wrist problems. Initially, the Appeals Commission accepted aggravational responsibility for the worker's right wrist problems. The Appeals Commission determined that ongoing entitlement had not been dealt with and therefore it was without jurisdiction to determine this issue. On rehearing, the Appeals Commission determined that there was no evidence of pre-existing right carpal tunnel syndrome with respect to the worker's right wrist. The Appeals Commission found that while the worker may have been pre-disposed to developing carpal tunnel problems, his job duties contributed to the onset of the problems. The Appeals Commission decided to accept full responsibility for the worker's right wrist problems. The Appeals Commission determined that it did not have jurisdiction to deal with acceptance of surgery on the right wrist or with respect to ongoing entitlements since these matters had not been specifically dealt with at the CSRC. The Appeals Commission stated "it would be unfair to both parties in that it would eliminate one level of adjudication and one level of appeal".

- In June of 1995, the worker, made a compensation claim for 'respiratory illness' which was described as a progression of illness over thirty years of employment as a painter. The WCB accepted that the worker's hyperactive airway condition was caused, in part, by his exposure to paint and solvent irritants in his work environment. The claim was accepted and the worker was provided with vocational rehabilitation benefits. A request for Temporary Total Disability (TTD) benefits was denied. The CSRC upheld the decision to deny TTD benefits. The Appeals Commission denied the request for TTD benefits on the basis that the worker was not totally disabled from all forms of employment. The Board of Directors ordered the Appeals Commission to rehear the matter and give fair and reasonable consideration to section 51(7) of the *Workers' Compensation Act* on the basis that when considering whether a worker is entitled to TTD benefits, the worker does not have to be disabled from all forms of employment, but from all forms of SUITABLE employment. The Appeals Commission reheard the matter and found that the worker was not disabled from all forms of suitable employment. The Appeals Commission denied TTD benefits.

HIGHLIGHTS OF REVIEW BY THE OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

One investigation began in 1998 and was concluded by the Office of the Privacy Commissioner in 1999.

- Investigation #1501 found that the Appeals Commission had not violated any provisions contained in Part 2 of the *Freedom of Information and Protection of Privacy Act* (FOIPP Act). The worker alleged that the Appeals Commission breached his privacy by disclosing information about him to third parties. He also complained that the Appeals Commission violated the FOIPP Act by collecting personal information when it allowed intervenors to make submissions at a hearing and that it breached the FOIPP Act when it used the information provided by the intervenors in making its decision.

The investigator found that the Appeals Commission did not disclose information from the worker's file to the intervenors. The Appeals Commission did not permit the intervenors access to the file and the intervenors' participation at the hearing was restricted to an appearance for their submissions. They were not permitted to remain in the hearing once the submissions had been made. The Appeals Commission did not provide a copy of its decision to the intervenors, it merely provided a summary of the result. The investigator also found that the decision to accept submissions from the intervenors was within the jurisdiction of the Appeals Commission and was authorized pursuant to section 32(c) of the FOIPP Act. The final conclusion reached by the investigator was that the Appeals Commission used personal information for the purpose for which it was collected and that this was consistent with sections 37(a) and 39 of the FOIPP Act.

The investigator concluded that the Appeals Commission did not violate Part 2 of the FOIPP Act.

2000 APPEALS COMMISSION OBJECTIVES

The Appeals Commission continues to refine the strategic planning process each year. The three year strategic plan for 1999 to 2001 provides a focus for the activities of the Appeals Commission which will continue to move us forward.

As the Appeals Commission did not meet our 1999 processing objectives we will increase our focus during 2000 on the achievement of processing objectives and lessen our focus on our long-term objectives. While the achievement of these objectives remains important, our revised focus of our activities will mean that our long-term objectives will be achieved over a longer period of time than originally planned.

The following section identifies the long-term and processing objectives for 2000 from the plan.

LONG TERM OBJECTIVES FOR 2000

Improve application of legislation, policy and procedure.

- Continue the development of interpretive guidelines and practice guidelines to support consistency and for use of clients.
- Continue to develop administrative procedures to support internal efficiency and consistency.

Ensure an appeal system that is accessible and clear to users.

- Develop and implement a plan to provide online access for clients to guidelines.

- Complete an evaluation and update of the Appeals Commission "Rules of Procedure".
- Develop and implement website access to the Appeals Commission.

Provide for uncompromised independence of decision making.

- Research, evaluate and prepare an appropriate governance model for the Appeals Commission.
- Define and formalize administrative service relationships.

Implement a Quality Management System.

- Complete scheduled audits of decision documents and evaluate against established performance standards.
- Develop and implement quality assurance program for hearing process.

Improve organizational expertise and learning.

- Develop individual learning plans for each appeals commissioner and hearing chair.
- Continue the implementation of performance appraisal system for appeals commissioners and hearing chairs.
- Continue to develop an Appeals Commission learning plan based on the individual learning plans of Appeals Commission staff.

Maximize access to, and availability of, up-to-date technology.

- Continue the acquisition of hardware for the Appeals Commission to ensure maximum availability for appeals commissioners.
- Continue to upgrade software to provide effective technology.

Integrate technology and systems in innovative ways in the processes and operations of the Appeals Commission.

- Complete documentation of processes and continue evaluation to revamp and revise processes to maximize integration of technology.

Implement up-to-date file management practises.

- Continue the development of reporting capabilities of the Appeals Management System to provide data for day to day management of appeals.
- Develop a DOCS (template) system to link document production to the Appeals Management System.

Implement up-to-date business management practises.

- Complete an audit of OH&S Program for the Appeals Commission.
- Continue the development and documentation of forecasting and budgeting processes for the Appeals Commission.
- Revise and update the Appeals Commission Strategic Plan.

PROCESSING OBJECTIVE #1

Projected initial appeals for 2000: **1406 appeals**
Project reconsideration applications for 2000: **214 applications**

Improve the service provided to appellants by increasing the number of appeals and other applications finalized while decreasing the time used in processing.

KEY MEASURES

- Conclude a minimum of 70% of initial appeals on hand at the start of the year plus the initial appeals received in 2000.
  647+1406 (projected) = 2053 appeals
  Target 70%
  = 1437 appeals
- Conclude a minimum of 75% of applications for reconsideration at year end plus applications for reconsiderations received in 2000.
  73 + 214 (projected) = 287
  Target 75%
  = 215 reconsideration applications
- Time from the receipt of an appeal until the appeal is finalized
  Baseline – 145 days
  Target – 140 days
- Time from the receipt of an appeal until the hearing
  Baseline – 70 days
  Target – 68 days
- Time from the hearing until the appeal is finalized
  Baseline – 75 days
  Target – 72 days
- % of appeals that are processed within 103 days of receipt
  Target – 60% of appeals finalized (1437)
  = 862 initial appeals
- % of appeals that are processed within 140 days of receipt
  Target – 90% of appeals finalized (1437)
  = 1293 initial appeals
- Reduce the Commission backlog appeals
  Baseline – 153
  Target – 10% reduction
  = 138

PROCESSING OBJECTIVE #2

Reduce the amount of rework associated with appeal workload.

KEY MEASURES

- Reduction in reconsiderations on own motion
  Baseline – 11
  Target – 25% reduction
  = 9
- Reduction in Section 8(7) applications granted
  Baseline – 5
  Target – 20 % reduction
  = 4
- Reduction in clarifications issued
  Baseline – 39
  Target – 20% reduction
  = 31
- Maintain the number of decisions overturned by the courts
  Baseline – 0
  Target – 0
- Reduction in the number of Ombudsman recommendations issued
  Baseline – 10
  Target – 25% reduction
  = 6

APPENDIX A

THREE YEAR STATISTICAL SUMMARY

1996 - 1998

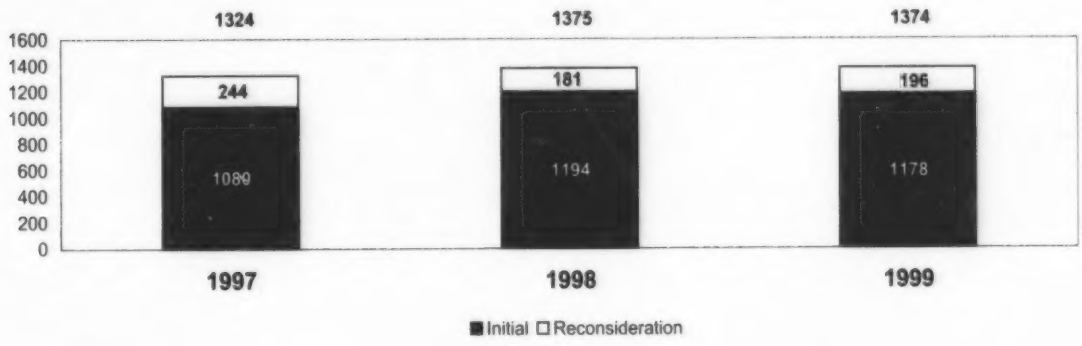
The statistical information contained in this Appendix summarizes the activities of the Appeals Commission in the following five major categories:

Appeal Volumes
Hearing Activities
Decision Activities
Processing Timelines
Review of Decisions

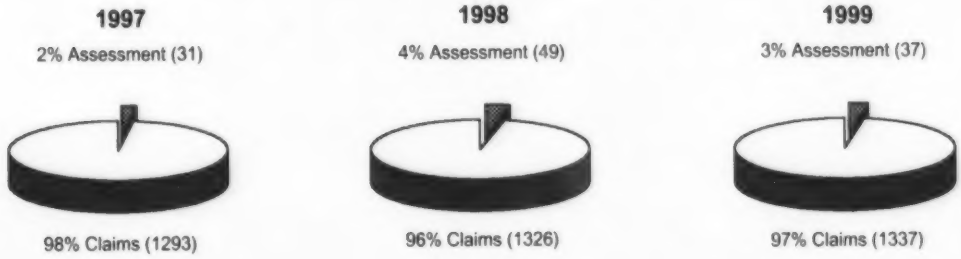
This is intended to provide a historical perspective of the activities of the Appeals Commission over the past three years.

APPEAL VOLUMES

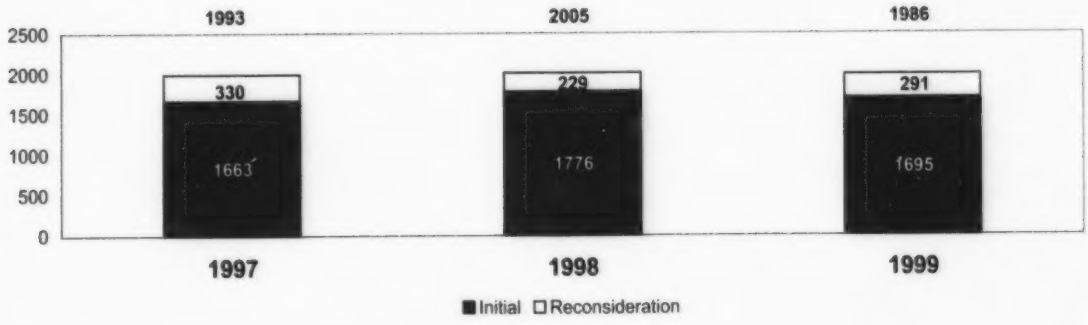
Initial Appeals and Applications for Reconsiderations Received



Breakdown of All Applications Type



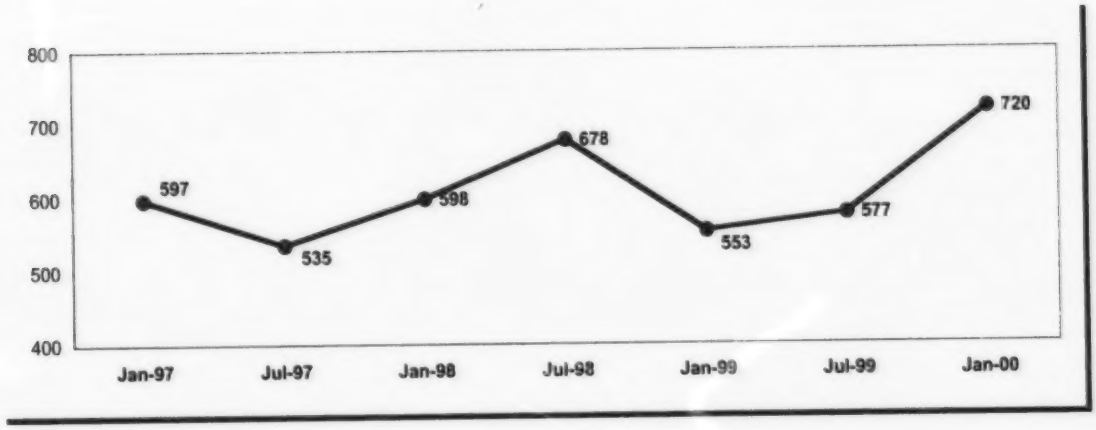
Total Issues Involved in Initial Appeals and Applications for Reconsiderations



Issues of Appeal by Volume

	1997	1998	1999
Temporary Total Disability Entitlement	15%	12%	14%
Permanent Disability Entitlement	13%	9%	9%
Additional Entitlement	13%	11%	11%
Earnings Loss Supplement Entitlement	10%	6%	5%
Acceptability of Claim	9%	10%	8%
Change in Permanent Disability Entitlement	7%	5%	5%
Increased Responsibility	7%	12%	13%
Cost Relief	2%	6%	6%
Other	24%	29%	29%

Appeals in Process



HEARING ACTIVITIES - INITIAL APPEALS

Number of Hearings Conducted

1997
1029 Hearings Conducted

1998
1095 Hearings Conducted

1999
913 Hearings Conducted

Type of Hearing

8% Documentary (80)

92% In-Person (949)

10% Documentary (104)

90% In-Person (991)

14% Documentary (124)

86% In-Person (789)

Representation at Hearing

10% Unrepresented (101)

90% Representation (928)

14% Unrepresented (158)

86% Representation (937)

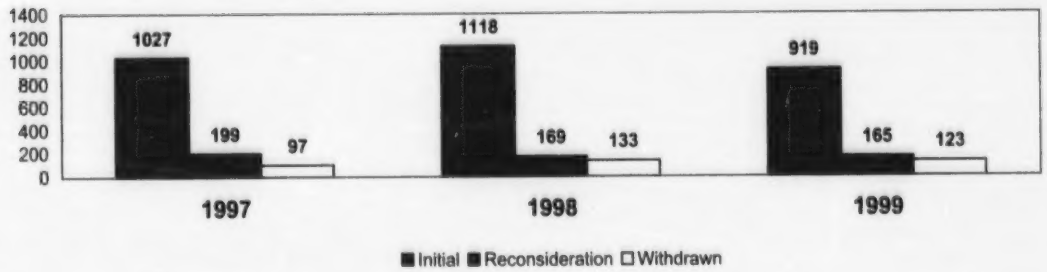
18% Unrepresented (164)

82% Representation (749)

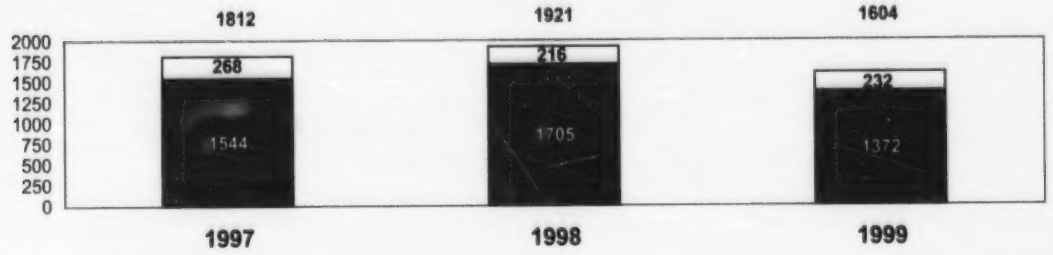
NOTE: 1998 figures have been corrected to reflect only initial appeals. Reconsiderations have been removed.

DECISION ACTIVITIES

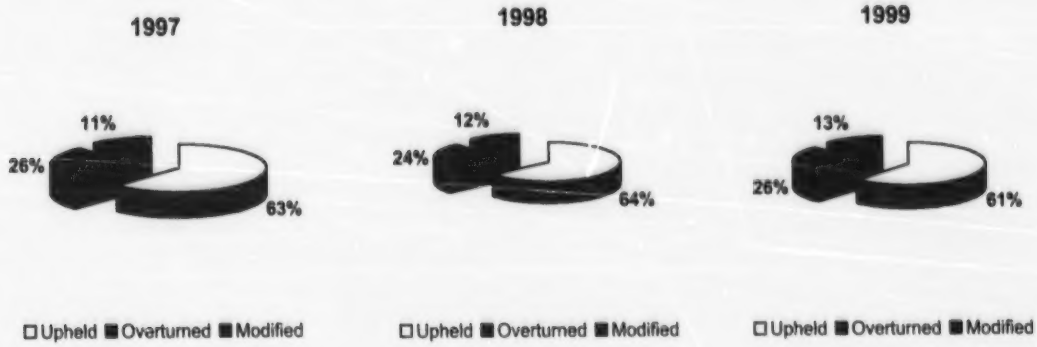
Number of Applications Finalized



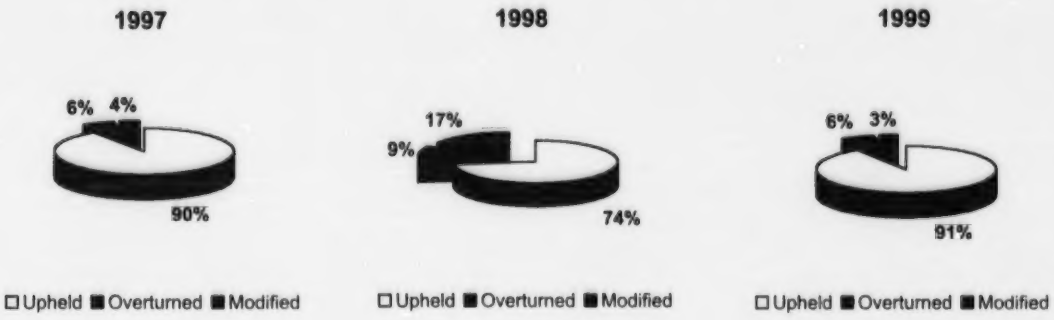
Number of Issues of Appeal Finalized



Final Disposition of Initial Appeals by Issue

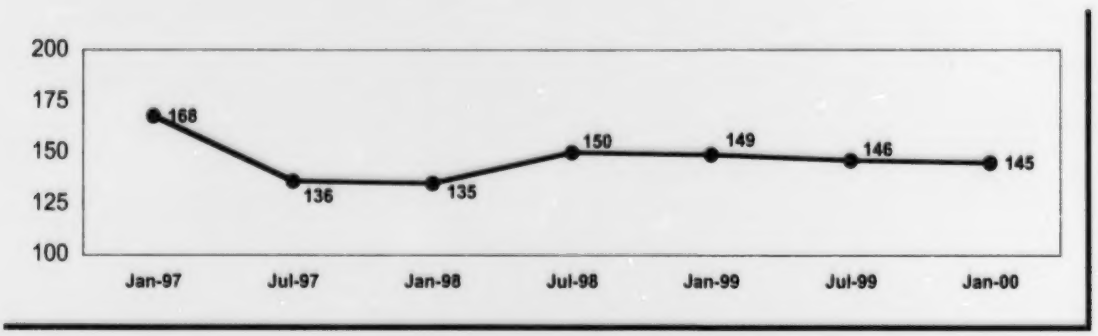


Final Disposition of Reconsiderations by Issue

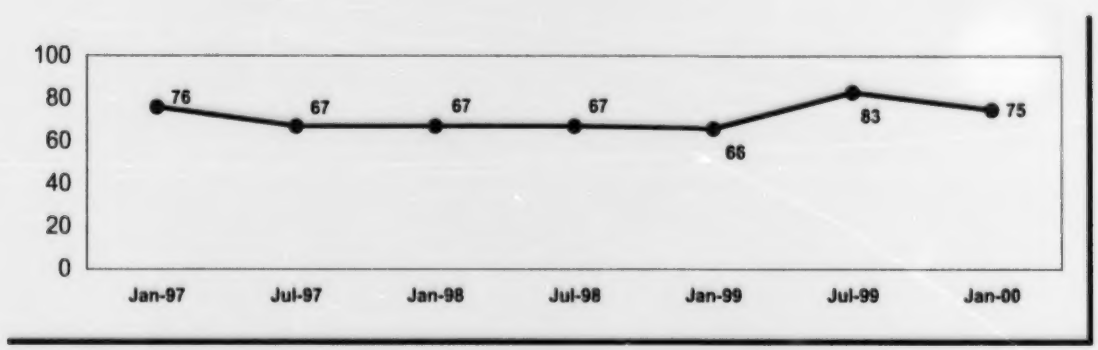


PROCESSING TIMELINES

Number of Days from Appeal Accepted to Appeal Finalized



Number of Days from Hearing Scheduled to Appeal Finalized



REVIEW OF DECISIONS

Judicial Review of Appeals Commission Decisions

	1997	1998	1999
# of court actions commenced	12	13	13
# of court actions concluded	15	5	6
# of applications dismissed by court	10	5	6
# of decisions overturned by court	0	0	0
# of decisions Appeals Commission agreed to reconsider without court order	4	n/a	n/a
# of court actions adjourned sine die/discontinued	3	6	5

Review of Appeals Commission Decisions by the Board of Directors – Section 8(7)

	1997	1998	1999
# of Section 8(7) Reviews	11	23	17
# of Section 8(7) Concluded	11	16	16
# of Section 8(7) Dismissed	9	10	11
# of Section 8(7) Directives to AC by the Board of Directors	2	6	5

Ombudsman's Review of Appeals Commission Decisions

	1997	1998	1999
# of Ombudsman Investigations Commenced	102	81	63
# of Ombudsman Investigations Concluded	109	60	78
# Recommendations made by the Ombudsman	4	6	10

Reconsiderations on Own Motion of Its' Decisions

1997	1998	1999
28	12	11

Appeals Commission Clarification of Decisions

1997	1998	1999
99*	44	39

* Note: The 1997 total is based on the actual number for the last 9 months of the year.

APPENDIX B

THREE YEAR FINANCIAL SUMMARY

1997 – 1999

This section provides a three year summary of the operating and capital expenditures of the Appeals Commission together with highlights and explanatory notes for each of the three years.

All operating costs of the Appeals Commission are paid from the Accident Fund as provided by Section 6 of the *Workers Compensation Act*.

FINANCIAL OBJECTIVE

Complete 1999 within the approved 1999 operating budget of 4.4 million dollars.

		Obj.	Actual
ANALYSIS	• 1999 Budget • 1999 Expenditures	$4,438,650	$4,300,318

CONCLUSION This objective was achieved.

OPERATING BUDGET

	1997	1998	1999
COMMISSION SALARIES AND BENEFITS			
Appeals Commissioners' Salaries	982,859	1,143,960	1,181,202
Commission Staff Salaries (including severances)	1,432,920	1,527,833	1,656,219
Benefits	360,765	333,812	345,529
Performance Awards	115,760	65,543	83,095
Other Staff Related Expenses – ie. Training	35,072	59,079	57,095
TOTAL SALARIES & BENEFITS	**2,927,376**	**3,130,227**	**3,323,140**
FIXED COSTS			
Rental Leased Premises	255,756	311,324	309,577
Amortization	29,174	43,335	47,559
TOTAL FIXED COSTS	**284,930**	**354,659**	**357,136**
SYSTEMS – HARDWARE/SOFTWARE COSTS	**53,131**	**86,577**	**120,547**
ADMINISTRATIVE COSTS			
Administrative services from WCB for systems	81,109	98,239	184,676
Travel	61,650	89,045	96,004
Other Administrative Costs	71,580	173,667	218,815
TOTAL ADMINISTRATIVE COSTS	**214,339**	**360,951**	**499,495**
TOTAL OPERATING EXPENDITURES	**3,479,776**	**3,932,414**	**4,300,318**
APPROVED BUDGET	**3,410,911**	**3,982,041**	**4,438,650**
BUDGET VARIANCE	**(68,865)**	**49,627**	**138,332**

CAPITAL BUDGET

	1997	1998	1999
LEASEHOLD IMPROVEMENT EXPENDITURES	**266,231**	**79,962**	**3,081**
APPROVED CAPITAL BUDGET	**0**	**150,000**	**20,000**
BUDGET VARIANCE	**(266,231)**	**70,038**	**16,919**

1999 BUDGET HIGHLIGHTS AND EXPLANATORY NOTES

OPERATING BUDGET

- A total operating budget surplus of $138,332 (3%) existed at year end.
- Budgeted increases in operating costs of approximately 9.4% occurred from 1998 to 1999. Increased operating costs of $367,904 were as a result of:
  - Increase in salaries and benefits for Commission staff of $192,140 (5.8%) due to market adjustment for appeals commissioners, re-classification of existing positions and increased administrative staffing.
  - $86,437 (88%) increase in the direct billed cost of administrative services received from the WCB for information systems support.
  - Increase of $33,970 (39%) in costs for computer hardware and software requirements to meet implementation objectives.
  - $45,150 (26%) increase in administrative costs to provide office equipment and furnishings in compliance with Occupational Health and Safety standards.
  - Increase in lease rental and operating costs of $2,477 (0.7%).
  - Increase in travel costs of $6,959 (7.8%).

CAPITAL BUDGET

- A capital budget surplus of $16,919 existed at year-end.
- $ 3,081 was expended to replace worn carpet in the Edmonton offices.

APPENDIX C

APPEALS COMMISSIONER APPOINTMENTS

The Appeals Commission was, as of December 31, 1999 comprised of the following appeals commissioners appointed by Order of the Lieutenant Governor in Council:

Chairman and Chief Appeals Commissioner

G. Pheasey

Appeals Commissioners/Hearing Chairs

P. Farmer
M. Fulford
T. Irwin
L. Kelly
B. Otterdahl
M. Tamtom
R. Vermette

Appeals Commissioners

H. Buchwald
T. Bunce
J. Bruyer
W Canning
M. Dungey
O. Eveneshen
J. Frost
J. Hubler
D. Hunt
C. Kilburn
K. Kunicki-Tadman
G. Litchfield
E. Luders
J. Neale
E. Paterson
J. Prowse
R. Rice
J. Ross
B. Stephenson
D. Turner

Remuneration for Appeals Commissioners as established by Order-in-Council

	Full-time Appeals Commissioner/Hearing Chair	Part-time Appeals Commissioner	Chairman & Chief Appeals Commissioner
Salary Range	$ 63,240 to $ 86,700	$ 204 per day $ 122 for 1/2 day	$81,600 to $113,628
Average yearly Salary/plus Benefits-1998	$81,787	$13,440 to $42,060	$122,702
Average yearly Salary/plus Benefits-1999	$85,596	$6,240 to $39,806	$128,608

RECRUITMENT OF APPEALS COMMISSIONERS

The Appeals Commission has established and continues to use an open competitive process for the initial recruitment of all appeals commissioners. The process is:

- Opportunities are advertised and applications are invited.
- Applications are screened to identify a list of candidates for initial interview.
- Initial interviews of these candidates are conducted to establish a short-list.
- In-depth interviews of the short-listed candidates are conducted by a selection panel consisting of a person representative of the interests of workers, a person representative of the interests of employers, the Chief Appeals Commissioner and a human resources advisor.
- Recommendations are presented to the Minister for appointments of appeals commissioners.
- The Minister provides recommendations for appointment to Cabinet for approval.
- Based on Cabinet approvals Orders in Council are presented to the Lieutenant Governor in Council for signature.

Special thanks to Charlie Fisher from Canada Post and Dave Morris of the Canadian Federation of Labour for participating in the selection process in 1999.

PERFORMANCE ASSESSMENT OF APPEALS COMMISSIONERS

- A formalized process for the performance appraisal of appeals commissioners and hearing chairs has been implemented.
- A yearly performance appraisal and a semi-annual review is completed for each appeals commissioner and hearing chair.
- Each hearing chair provides input regarding the performance of each appeals commissioner. Based on this input the Chief Appeals Commissioner meets individually with each appeals commissioner to discuss performance and objectives.
- Each appeals commissioner is asked to provide input to the Chief Appeals Commissioner on each hearing chair. Based on this input the Chief Appeals Commissioner meets individually with each hearing chair to discuss performance and objectives.
- Appeals commissioners and hearing chairs are recommended for re-appointment based on ongoing performance appraisals.

APPENDIX D

AVAILABLE PUBLICATIONS

'A Guide to the Appeals Commission'

A brochure to provide basic information regarding the Appeals Commission and how it operates.

'Appeals Commission Rules of Procedure'

Includes the Rules of Procedure that the Appeals Commission has adopted to govern how the Appeals Commission will deal with various administrative processing matters. It is intended to help parties prepare for and participate in the appeals process.

'In Review'

A quarterly newsletter which publishes a summary of various decisions issued by the Appeals Commission. It is available by subscription at the cost of twelve dollars per year.

'Annual Report for 1999'

Reports on the activities of the Appeals Commission for 1999. Limited copies of previous Annual Reports are available.

'Appeals Commission Strategic Plan'

The Appeals Commission Three Year Strategic Plan identifies the long-term and processing objectives for 1999 to 2001. Also available is a Three Year Strategic Plan with implementation details which provides more detailed explanation of activities for 1999 to 2001.

Copies of all of the above publications are available by contacting:

Appeals Commission
901, 10109 – 106 Street
Edmonton, AB T5J 3L7
Telephone: (780) 412-8700 - Fax: (780) 412-8701

or

Appeals Commission
4th Floor, 1701 Centre Street North
Calgary, AB T2E 7Y2
Telephone: (403) 508-8800 - Fax: (403) 508-8822

Our Values

Respect: *We respect all persons treating them with honesty and integrity.*

Excellence: *We are committed to excellence in service through quality and consistency.*

Fairness: *We achieve fairness through being impartial and unbiased.*

Co-operation: *We achieve co-operation through sincere, open communication and teamwork.*